



IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLICATION NO. 176 OF 2020

(CORAM: OKWENGU, JA (IN CHAMBERS))

BETWEEN

JULIET ATIENO OUKO.....APPLICANT

AND

CRAFT SILICON LIMITED.....RESPONDENT

(Being an application to file notice of appeal out of time in an intended appeal against the

Judgment and Decree of the Employment and Labour Relations Court

at Nairobi (Radido, J.) delivered on 29th May, 2020

ELRC No. 1356 of 2016)

RULING

[1] By a notice of motion dated 26th June, 2020, **Juliet Atieno Ouko** the applicant, seeks to have time extended to enable her file the notice of appeal against the judgment of the Employment and Labour Relations Court (ELRC), delivered on 29th May, 2020 out of time.

[2] In an undated affidavit sworn in support of the motion, the applicant swears that she was locked out of Nairobi and was unable to give instructions to her advocate to file an appeal, and that she has an arguable appeal with high chances of success. The applicant has also filed written submissions in which she urges the Court that the delay in filing notice of appeal was not inordinate and that the Court should therefore exercise its discretion in her favour.

[3] I have considered this application. Under Rule 4 of the Court Rules, this Court has unfettered discretion to extend time. As was held by this Court in **Mwangi vs Kenya Airways Limited [2003] 486** which was cited by the applicant, matters which the Court takes in account in deciding whether to grant an extension of time are: the length of the delay, the reason for the delay, possibly the chances of the appeal succeeding if the application is granted, and the degree of prejudice to the respondent if the application is granted.

[4] In this matter, the judgment subject of the intended appeal was delivered on 29th May, 2020 and the application before us was filed on 26th June, 2020. The notice of appeal ought to have been filed within fourteen (14) days. This means that there has been a delay of twelve (12) days. This, by any standards is not inordinate. The applicant has explained that the delay was due to the movement restrictions arising from the Covid-19 pandemic, which made it difficult for her to communicate with her advocate. She has not informed us where she was, but we do appreciate the difficulties that litigants have been exposed to due to the restrictions imposed as a result of the Covid-19 pandemic.

[5] Although the respondent's advocate was served, there was no affidavit filed in response to the motion, nor were any submissions filed. It is evident that the respondent is not likely to suffer any prejudice. For these reasons, I allow the application and grant leave to the applicant to file and serve her notice of appeal within seven days from the date hereof. I make no orders as to costs.

Dated and delivered at Nairobi this 5th day of March, 2021.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

*I certify that this is a true
copy of the original.*

Signed

DEPUTY REGISTRAR